

# Grant County Planning Commission

## April 28<sup>th</sup>, 2003

The April 2003 regular meeting of the Planning Commission was called to order by John Lawrence at 7:00 p.m.

Those in attendance: Marvin Faulkner, Vernon Webster, Stephen Fritz, Bill Marksberry, Nick Kinman, William Covington, Nancy Duley, Stephen Mann, John Lawrence, Ray Erpenbeck and Tom Nienaber.

There was a quorum present.

### ITEM 1. MARCH MINUTES

May meeting

### ITEM 2. MARCH FINANCIAL REPORT

Vernon Webster made a motion to approve the financial report for March, Stephen Fritz seconded the motion. A hand vote was taken, all members in attendance voting in favor of the motion. Motion passes.

### ITEM 3. ADMINISTRATORS REPORT

John Lawrence read a letter from Jonathan stating that the Commission's regular meeting in May was going to fall on Memorial Day and he suggested that the commission reschedule the meeting for Tuesday, May 27<sup>th</sup> 2003.

Bill Marksberry made a motion to hold the May meeting on May 27<sup>th</sup>, 2003, Nick Kinman seconded the motion. A hand vote was taken, all members in attendance voting in favor of the motion. Motion passes.

### ITEM 4: ZONE CHANGE - SOUDER A1 TO RR

APPLICANT: Christina Souder

GENERAL LOCATION: An approximate 3.0 acre area located on the northwest side of Baton Rouge Rd., approximately 3.2 miles west of Route #25

REQUEST: to change the zoning of the property from A1 - Agricultural-One to RR - Rural-Residential

John Lawrence declared the public hearing open and asked if all fees were paid and notices given. Staff replied that fees were paid and notices given.

Ms. Souder stated that the request was to place a manufactured home on the property.

John Lawrence asked if anyone wished to speak for or against the request. No one spoke for or against the request.

John Lawrence read the staff recommendation which stated that the staff recommends approval of the zone change request because the proposal is in compliance with the adopted comprehensive plan. Finding in support of this recommendation are as follows: 1. lot sizes are appropriate for the development since there is an existing residence on this portion of the property. 2. the roadway is sufficient to accommodate the amount of traffic that could be generated from the proposed zoning classification provided that the encroachment permit is granted. 3. there are no environmental or urban service constraints to the property.

Ms. Souder presented a driveway permit from the County Road Department and a letter stating that the property would not be divided again.

John Lawrence declared the public hearing closed.

Stephen Mann made a motion to approve the request with the condition that there be no further division of the lot, based on the following findings of fact 1. lot sizes are appropriate for the development since there is an existing residence on this portion of the property. 2. the roadway is sufficient to accommodate the amount of traffic that could be generated from the proposed zoning classification provided that the encroachment permit is granted. 3. there are no environmental or urban service constraints to the property, Stephen Fritz seconded the motion. A hand vote was taken, all members in attendance voting in favor of the motion. Motion passes.

### ITEM 5: ZONE CHANGE - A&H DEVELOPMENT R1 TO A1

APPLICANT: A&H Development

GENERAL LOCATION: An approximate 173.7 acre area located on the south side of Warsaw Rd., approximately 3.5 miles west of Taft Hwy.

REQUEST: to change the zoning of the property from R1 - Residential-One to A1 - Agricultural-One

John Lawrence declared the public hearing open and asked if all fees were paid and notices given. Staff replied that fees were paid and notices given.

Steve Howe, representing Allen Iseral, stated that the request was to down zone the property. He stated that the subdivision was originally approved under the A1 zone when A1 was 1 acre and when the builders started building they needed to be closer to the road and Linden Smith advised the developers to go to R1 zone. Mr. Howe said that the lots are 1 acre and there has been trouble with the lots perking so a lagoon system was built, he said that there was so public sewer to the property. There is currently 160 acres left and 42 acres is not zoned R1. The request is to allow the lots to be marketed as 25 - 30 acres tracts which is within the A1 zone and the Comprehensive Plan for the area. He said that after the Commission held the hearing to change the property from A1 to R1 the developers sent a letter to Fiscal Court withdrawing the request but the Court has already had their 1<sup>st</sup> reading. He stated that the developers would agree to the restriction of not allowing singlewide mobile homes. Mr. Howe said that due to the perk requirements the land was not viable as R1. He said that the plans were for 6 separate lots and that A1 is in conformance with the Comprehensive Plan.

John Lawrence asked if anyone wished to speak for or against the request.

John Lovelace, resident of Ambassador Drive, stated that he was in opposition of the zone change and that there is pending law suit due to the failing lagoon and the property should not be change until the law suit is settled.

Jeff Shipp stated that the Jonathan's recommending concerning the Souder zone change he stated that there were no environmental issues and in this case there are. He said that there are 16 homeowners with sewage problem and 14 failed the perk test. He said that the lagoon system has failed 2 times and is in the process of failing a 3<sup>rd</sup> time and is an issue that effects these people and makes their homes unmarketable. He said that the lagoon needs to be fixed or a package treatment plan put in. Mr. Shipp said that this is an unusual situation because A&H cannot market the land because there is no sewer and cannot get septic systems approve and therefore is request to create an agricultural use on a residential street. He said that no one is against using the property but the existing problems need to be addressed and he pointed out the number of property owners present the object the request.

Mr. McLaughlin, asked the Commission not to approve the request. He said that they want to change the zoning so that they can sell the property and leave the owners there.

Steve Howe stated that Mr. Shipp is accurate is why the developers are requesting the change to A1 and asked if they would rather have 3 homes or 130 homes, he said that there is not going to be more traffic if the request is granted and the issue of the pending law suit is not an issue with the zoning of the property.

Mike Melton stated that the marketing of the property is the main concern that is they can have a 25-acre tract in the R1 zone but they cannot have a horse.

Jeff Shipp stated that the rest of the development couldn't be divided because the utilities do not exist and that the sewage has been in failure mode since it was built. He said that the retention ponds were supposed to be temporary but they still exist. And he state that who would want to live in a subdivision with farm equipment driving through. He stated that this would create a dangerous situation.

Tiffany Maines stated that she had lived on a farm all her life and knows what tractor due to a road and then the property owners would have to pay for it.

Robert Sturgeon stated that he built on street because it was peaceful and the kids could play on the street.

John Lawrence declared the public hearing closed.

Nancy Duley excused herself from discussion and voting.

Vernon Webster stated that he didn't think a package treatment plans was discussed and thought that the stated recommended a lagoon system.

Mr. Iseral stated that the system needs repairs but the homeowners didn't want repairs and is now in litigation.

Tom Neinaber stated that the Commission was the to the request in view of the context of the zoning and the fact of the lawsuit is not a factor to be concerned with in this decision. He said to consider traffic, environment, safety, adjoining property, road and farm issues.

The Commission reviewed a plat showing the proposed division of the lots.

Stephen Mann questioned the access to the lots.

Mr. Iseral stated that 3 lots would come off of the cul-de-sac and 2 lots from private access.

Stephen Mann stated that they could sell the large lots with the R1 zoning but could not have livestock.

Mr. Nienaber stated that they have a residential lot of 27 acres and can put a home on it.

Marvin Faulkner asked if the street was county maintained.

Mr. Iseral stated that it was a county road and he was up for putting restriction against heaving farming on the property.

John Lawrence asked if he had checked into a package treatment plan.

Mr. Iseral stated that the construction costs have gone so high that the property is not feasible to develop out and would have problems with a treatment plant also.

Marvin Faulkner asked if there was only 1 lagoon.

Mr. Iseral said that they were cluster lagoons with holding tanks.

Vernon Webster asked if any of the land was tillable.

Mr. Iseral said that there were some flat ridges.

Stephen Fritz asked which lot the lagoon was spilling onto.

Mr. Iseral stated that it was lot B.

John Lawrence read the staff recommendation which stated that the staff recommends denial of the zone change request because the proposal is not in compliance with the adopted Comprehensive Plan nor is the property improperly zoned nor has there been major changes in economic physical or social nature that were not anticipated by the Comprehensive Plan. Finding in support of this recommendation are as follows: 1. land uses are incompatible due to the close proximity of the proposed change. If the property was adjacent or "near" the current subdivision, the incompatibility issues could be mitigated, but with the proposed agricultural use in the middle of the approved development, there could be several incompatibility issues that cannot be mitigated. 2. the applicant has failed to provide this office with any sustainable evidence that there has been a change in the economic, physical or social nature that was not anticipated by the Comprehensive Plan. 3. the current zoning classification is appropriate in that it provides for suitable lands for the expansion of the existing subdivision.

Stephen Mann stated that there was a problem with the environmental issues if the system is failing onto this property.

Jeff Shipp said that there are no provisions for the lagoon system as to owning issues except for 3<sup>rd</sup> party buying problem.

Mr. Iseral said that Lot B could not be marketed until the problem is removed and it is in the covenants of the subdivision that the monthly fees are for maintenance of the system.

William Covington asked if the lots would be divided again.

Mr. Iseral said that there is not enough road frontage for the property to be divided.

Stephen Mann made a motion to deny the request due to part of the request was involved in environmental problems and the mix of A1 with R1 would create undue hardship on the R1 lots, William Covington seconded the motion. A roll call vote was taken. Marvin Faulkner: no, Vernon Webster: yes, Stephen Fritz: yes, Bill Marksberry: yes, Nick Kinman: yes, William Covington: yes, Stephen Mann: yes, motion passes.

Mr. Meade stated that he would agree to not further dividing the lot.

John Lawrence declared the public hearing closed.

Vernon Webster made a motion to approve the request with the condition that there be only one residence on the property and there be no further division of the lot, based on the finding of fact that the request is in compliance with the comprehensive plan, Bill Marksberry seconded the motion. A hand vote was taken, all members in attendance voting in favor of the motion. Motion passes.

## **ITEM 6: ZONE CHANGE - MEADE A1 TO RR**

APPLICANT: Mark Meade

GENERAL LOCATION: An approximate 5.0 acre area located on the north side of Boltz Lake Rd., approximately 0.1 miles east of Dry Ridge Mt. Zion Rd.

REQUEST: to change the zoning of the property from A1 - Agricultural-One to RR - Rural-Residential

John Lawrence declared the public hearing open and asked if all fees were paid and notices given. Staff replied that fees were paid and notices given.

Mr. Meade stated that the request was for a single-family building site and that he is willing to restrict it to only one division.

John Lawrence asked if anyone wished to speak for or against the request. No one spoke for or against the request.

John Lawrence read the staff recommendation, which stated that the staff recommends denial of the zone change request because the proposal is in compliance with the adopted comprehensive Plan, with condition. Finding in support of this recommendation are as follows: 1. lot sizes are too large for the development of a rural residential zoning classification. 2. the roadway is sufficient enough to accommodate the amount of traffic that could be generated from the proposed zoning classification provided that only one structure would be contained on the acreage. 3. the proposed zoning classification does "encourage the development of 'large lot' rural housing.": CONDITIONS: 1. the applicant should be limited on the amount of "out" conveyances for the property a. the property owner has let it be known that his condition is acceptable.

Mr. Meade stated that he would agree to not further dividing the lot.

John Lawrence declared the public hearing closed.

Vernon Webster made a motion to approve the request with the condition that there be only one residence on the property and there be no further division of the lot, based on the finding of fact that the request is in compliance with the comprehensive plan, Bill Marksberry seconded the motion. A hand vote was taken, all members in attendance voting in favor of the motion. Motion passes.

## **ITEM 7: CLAIBORNE ESTATES- REVISED PRELIMINARY PLAT**

Logan Murphy stated that a couple of months ago this portion was rezoned from county A1 to City R2 and annexed into the city limits of Crittenden. He stated that this development has been going on since 1994 and there are 2 sections currently developed and out of those 30 lots approximately 24 have homes on them. He stated that these homes will have City sewer and that there was a condition on the zone change that there only be single-family homes.

John Lawrence read a letter from Erpenbeck engineers recommending approval of the plat.

Logan stated that they are requesting a waiver of Section 7.3.1. of the Subdivision Regulations and provided the Commission with reasons for granting the waiver. He stated that the Subdivision Regulations require that the existing roadway be widened and they would like that to be waived because the street is only 2 ½ years old and was built to the specifications at that time. He said that requiring the street to be widened would require the utilities to be removed and the reason for the 25ft. is to allow for on street parking but that there are subdivision restrictions which do not allow for on street parking and it is required that all homes have a garage and the new section will require that all the homes have a 2 car garage.

Stephen Mann asked what the width was at the beginning of the street.

Logan stated that it was wither 28 or 30.

Stephen Fritz asked if Mr. Erpenbeck had any objection to the waiver.

Ray stated that he did not have any objection to the waiver.

Stephen Fritz made a motion to approve the plat with the requested waiver, Marvin Faulkner seconded the motion. A hand vote was taken all members in attendance of the meeting voting in favor of the motion. Motion passes.

Tony Pangallo read a letter from Erpenbeck Engineers recommending approval of the plat as revised 2/17/03.

Jerry Keith stated that the plan was to remove the existing Tobacco Mart building and construct a larger one on the same property.

Stephen Mann made a motion to approve the plan, Brooke Rider seconded the motion. A hand vote was taken, all members in attendance voting in favor of the motion. Motion passes.

#### **ITEM 8: CEDAR CREST- REVISED PRELIMINARY PLAT**

John Lawrence read a letter from Erpenbeck Engineers stating that they recommend approval of the plat as revised March 2003.

The commission reviewed copies of the plat

Marvin Faulkner made a motion to approve the plan, Nick Kinman seconded the motion. A hand vote was taken, all members in attendance voting in favor of the motion. Motion passes.

#### **ITEM 9: : LYNESSE COURT - PRELIMINARY PLAT**

Logan Murphy stated there the original property consisted of 2 homes each on a lot and Mr. Jackson had removed the homes and was requesting these 5 lots.

John Lawrence read letters from Jonathan Britt in reference to the plat.

John Lawrence read a letter from Erpenbeck recommending approval of the preliminary plat and stating that Lyness Court meets the physical requirements of Article 6 section 6.6 lots of the Grant County Subdivision Regulations. The issue raised in Mr. Britt's letter of April 7<sup>th</sup>, 2003 is an issue to be determined by the Planning Commission.

Gaylen Bridges, attorney for Mr. Jackson, stated that they were not here for a zone change or a variance that the property is zoned for Duplexes and has been for 20 years and this development is per the zoning code and the comprehensive plan. He stated that the owner will not asked for a variance for the driveway that he will keep it the required 2 feet from the property line. He stated that the engineer states that all the requirements have been met and that Mr. Britt does not like flag lots. Mr. Bridges stated that the reason for the flag lots is because the lot is very long and narrow and if they were to put a street they would not have any room. He stated that the required site distance for the entrance and exit meets the state requirements.

Logan stated that a previous developer had looked at the property and they laid the plat out with a street and in order to put 5 lots it would require several waivers from the Commission and if the waivers weren't granted they could be "cracker box" duplexes. He stated that the plan was for large 2 family homes with attached garages.

Stephen Mann asked if they could put a road along the property line.

Logan stated that they could put a road along the south side but he they would be "cracker box" houses and would required 7 or 8 variances and 3 or 4 waivers of the subdivision regulations.

Nancy Duley stated that they were taking 2 lots with single-family homes and turning it into 5 lots with duplexes.

Logan stated that was correct.

Mr. Jackson stated that there would be 5 duplexes 1200 square foot each with an attached garage. He said that there would be a 16ft. driveway in 1 way and a ½ circle out the other way. He said that they would rent for \$750 - \$800.

John Lawrence asked why they didn't build a road and eliminate a lot or 2.

Logan stated that this is the reason that flag lots are put in the subdivision regulations.

Nick Kinman asked if lot 3 would be accessed from the back.

Mr. Jackson stated that it would be from the front.

Mr. Jackson stated that these lots would never be sold individually that they would also remain under the same ownership.

Logan also stated that if there were to be a road put in on the south side that would provide frontage to that property to develop.

Mr. Jackson stated that he would agree to put a restriction on the plat that the lots cannot be individually sold.

Nick Kinman made a motion to approve the plat, Stephen Fritz seconded the motion. A hand vote was taken: Faulkner: yes, Webster: yes, Fritz: yes, Marksberry: yes, Kinman: yes, Covington: no, Duley: no and Mann: yes. Motion passes 6 to 2.

#### **ITEM 10: VOLVO RENTS - SITE PLAN**

Logan Murphy stated that the plan was for equipment rental site.

John Lawrence read a letter from Erpenbeck recommending approval with the condition that the Final Subdivision Plat be submitted and approved by the Commission for this parcel.

Stephen Mann made a motion to approve the plan with the condition, Stephen Fritz seconded the motion. A hand vote was taken, all members in attendance voting in favor of the motion. Motion passes.

**ITEM 11: JAMES LYNN CALDWELL - SITE PLAN**

Moved to May at the request of the applicant.

**ITEM 12. CONVEYANCE PLATS**

The commission reviewed a list of the conveyance plats approved during March. See attached sheet for list

Vernon Webster made a motion to approve the list as presented, Marvin Faulkner seconded the motion. A hand vote was taken, all members in attendance voting in favor of the motion. Motion passes.

**Item 13. Executive Session**

Stephen Mann made a motion to go into executive session to discuss personnel, Nick Kinman seconded the motion. A hand vote was taken, all members in attendance voting in favor of the motion. Motion passes.

Vernon Webster made a motion to come out of executive session, Stephen Mann seconded the motion. A hand vote was taken, all members in attendance voting in favor of the motion. Motion passes.

John Lawrence stated that no action was taken.

**Item 14: Other Business**

John Lawrence stated that the Budget Committee was going to research the possibility of hiring a firm to do the Commission payroll and report to the Commission at the next meeting.

**Item 15. Adjournment**

Vernon Webster made a motion to adjourn, Bill Marksberry seconded the motion. A hand vote was taken, all members in attendance voting in favor of the motion. Motion passes.

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**JOHN LAWRENCE, CHAIRMAN - DATE**

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**NICK KINMAN, SECRETARY - DATE**